

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:LM:NR:DAL:2OKL:POSTF-125763-02  
CGMcLoughlin

date: June 28, 2002

to: Team 1412, Large and Mid-size Business Division,  
Natural Resources  
Attn: Terry Meadors

from: Associate Area Counsel (LM:NR:DAL:2), Oklahoma City P.O.D.  
2000-OKC

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subject: Request for Advisory Opinion

Taxpayer: [REDACTED]  
EIN: [REDACTED]

Related taxpayer: [REDACTED]

This memorandum responds to your April 8, 2002 memorandum requesting our views on: (a) the validity of certain statute extensions, Form 872-P, executed on behalf of the subject partnership; and (b) whether the subject partnership is covered by the TEFRA partnership procedures for the taxable years [REDACTED] through [REDACTED]. This memorandum should not be cited as precedent. As discussed below, we are of the opinion that the [REDACTED] Forms 872-P, signed by [REDACTED], as common parent for its consolidated return group, will bind the partners that are members of the [REDACTED] consolidated return group. If [REDACTED] became a successor tax matters partner ("TMP") for [REDACTED] the [REDACTED] Forms 872-P also extended the assessment statute for the remaining partner, [REDACTED]. The [REDACTED] and [REDACTED] Forms 872-P extended the assessment statutes for all partners. Lastly, we are also of the opinion that the subject partnership is covered by the TEFRA partnership procedures for the taxable years [REDACTED] through [REDACTED].

This advisory is subject to the review procedures of CCDM (35)3(19)4(4). The CCDM procedures require us to transmit a copy of the memorandum to the National Office. The National

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Office has ten days from receipt of our memorandum to respond. The National Office may extend the review period if necessary. We will keep you informed of any delays.

## DISCUSSION

### Facts

#### a. Partnership Returns

[REDACTED] was a general partnership during the [REDACTED] through [REDACTED] taxable years. The partnership was engaged in the interstate transmission of natural gas. Prior to [REDACTED], [REDACTED] had [REDACTED] partners with the following capital and profits interests in the partnership:

[REDACTED]

Each partner was a C corporation.

On [REDACTED], [REDACTED] sold a [REDACTED] % capital and profits interest in [REDACTED] to [REDACTED]. [REDACTED] also was a C corporation. [REDACTED] and [REDACTED] were members of the [REDACTED] consolidated return group. [REDACTED] and [REDACTED] are wholly-owned subsidiaries of [REDACTED]. [REDACTED] was a member of the [REDACTED] consolidated return group for most of [REDACTED]. On [REDACTED], a subsidiary of [REDACTED] merged into [REDACTED]. [REDACTED] was never a member of the [REDACTED] consolidated return group. The [REDACTED] Form 1065 designated [REDACTED] as the TMP.

In [REDACTED], [REDACTED] sold its remaining [REDACTED] % capital and profits interest in [REDACTED] to [REDACTED]. Thereafter, [REDACTED] and [REDACTED] each owned a [REDACTED] % capital and profits interest in [REDACTED]. [REDACTED] filed timely Forms 1065 for [REDACTED] and [REDACTED]. The [REDACTED] and [REDACTED] Forms 1065 designated [REDACTED] as the TMP.

The [REDACTED] [REDACTED] Form 1065 included an attached statement with the following language:

[REDACTED]  
EIN: [REDACTED]

STATEMENT ATTACHED TO AND MADE A PART OF  
U.S. PARTNERSHIP RETURN OF INCOME (FORM 1065)  
FOR TAX YEAR [REDACTED]

ELECTION TO APPLY THE CONSOLIDATED AUDIT PROCEDURES

Under Internal Revenue Code Section 6231(a)(1)(B)(ii) and U.S. Treasury Regulation Section 301.6231(a)(1)-1T(b)(2), the taxpayer hereby elects to have the provisions of subchapter C of chapter 63 of the Internal Revenue Code apply with respect to the partnership.

Authorized officials of [REDACTED], [REDACTED] and [REDACTED] signed the statement.

b. Statute Extensions

In [REDACTED], the government obtained a Form 872-P for [REDACTED]'s [REDACTED] taxable year. The Form 872-P purported to extend the statute of limitations under I.R.C. § 6229 until [REDACTED]. [REDACTED] signed the statute extension as TMP. [REDACTED] also signed the statute extension as the [REDACTED] group consolidated parent. It is unclear whether [REDACTED] was still in existence by [REDACTED]. We also do not know whether, prior to [REDACTED], [REDACTED] was substituted as TMP under Treas. Reg. § 301.6231(a)(7)-1(d).<sup>1</sup>

Then in [REDACTED], the government obtained another Form 872-P for [REDACTED]'s [REDACTED] taxable year. The Form 872-P purported to extend the statute of limitations under I.R.C. § 6229 until [REDACTED]. [REDACTED] signed the

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<sup>1</sup> [REDACTED] may have been substituted as TMP. The [REDACTED] and [REDACTED] returns indicate [REDACTED] became TMP on [REDACTED]. [REDACTED] could be the effective date for a Treas. Reg. § 301.6231(a)(7)-1(d) TMP substitution.

statute extension as TMP. As with the earlier Form 872-P, [REDACTED] also signed the statute extension as the [REDACTED] group consolidated parent.

Earlier this Spring, the government sought additional statute extensions for [REDACTED] s [REDACTED] [REDACTED] and [REDACTED] taxable years. The Forms 872-P were similar to the earlier statute extensions. [REDACTED] signed as TMP and [REDACTED] signed as the [REDACTED] group consolidated parent.

After signing the Forms 872-P, the [REDACTED] tax department informed the government that [REDACTED] and [REDACTED] [REDACTED] had significant changes to their corporate structures at the end of [REDACTED]. Specifically, [REDACTED], the parent for both corporations, converted [REDACTED] and [REDACTED] from Delaware corporations into Delaware limited liability companies ("LLC"). The [REDACTED] tax department questioned whether the [REDACTED] [REDACTED] and [REDACTED] taxable years are covered by the TEFRA audit procedures. You have asked us to address these issues.

### Analysis

#### a. Statute Extensions

I.R.C. § 6229(a) provides the statute of limitations for assessment of income tax attributable to TEFRA partnership items and affected items. The statute of limitations shall not expire before the date 3 years after the filing of the partnership return or the due date for the return, whichever occurs later. I.R.C. § 6229(b)(1) permits the assessment statute to be extended by agreement for any tax attributable to a TEFRA partnership item or affected item. I.R.C. § 6229(b)(1)(A) permits the assessment statute to be extended for a particular partner by an agreement entered into by the government and the partner. I.R.C. § 6229(b)(1)(B) permits the assessment statute to be extended for all partners by an agreement entered into by the government and the TMP for the partnership (or "any other person authorized by the partnership in writing to enter into such agreement"). Typically, the government obtains a Form 872-P from the TMP and extends the statute of limitations for all partners under I.R.C. § 6229(b)(1)(B).

Treas. Reg. § 1.1502-77(a) generally provides that the consolidated parent is the sole agent for each subsidiary in all matters relating to the tax liability for the consolidated return year. While the regulation contains a few exceptions to the general rule, the regulation does not specifically limit the consolidated parent's otherwise expansive authority with respect to TEFRA partnerships. Since the parent is the sole agent for all members of the consolidated group, the parent has the authority under I.R.C. § 6229(b)(1)(A) to extend the I.R.C. § 6229(a) statute of limitations on behalf of its consolidated group members.

Here, we clearly have valid [REDACTED] statute extensions covering the [REDACTED] partners that are [REDACTED] consolidated group members.<sup>2</sup> As the common parent for the consolidated return group, [REDACTED] has broad authority to act on behalf of its consolidated group members. Treas. Reg. § 1.1502-77(a). That authority includes the ability to execute assessment statute extensions. *Id.* Thus, [REDACTED] could extend the [REDACTED] TEFRA assessment statute under I.R.C. § 6229(b)(1)(A). In light of that, the [REDACTED] TEFRA assessment statutes are open for both [REDACTED] and [REDACTED].

There is a possibility that the executed [REDACTED] Forms 872-P also covered the remaining partner, [REDACTED]. For example, if prior to [REDACTED] [REDACTED] selected [REDACTED] as the [REDACTED] successor TMP, the [REDACTED] Forms 872-P would have covered all the partners. See, Treas. Reg. § 301.6231(a)(7)-1(d).

Similarly, [REDACTED]'s authority as TMP might have been terminated by its liquidation or dissolution prior to [REDACTED]. Treas. Reg. § 301.6231(a)(7)-1(l)(1)(iii). If that occurred, [REDACTED] would have become the [REDACTED] TMP for [REDACTED] using the largest profits interest test of Treas. Reg. § 301.6231(a)(7)-1(m)(1) and (2). In that case, the executed [REDACTED] Forms 872-P would have covered all the [REDACTED] partners. I.R.C. § 6229(b)(1)(B). You will need to do some additional factual development to see if either of these situations may apply here.

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<sup>2</sup> We have assumed for purposes of this opinion that the persons signing the statute extensions had the authority to act on behalf of [REDACTED] and [REDACTED].

The [REDACTED] and [REDACTED] Forms 872-P extended the TEFRA assessment statutes under both I.R.C. § 6229(b)(1)(A) and (B). [REDACTED] is the TMP for [REDACTED] and [REDACTED]. Thus, [REDACTED]'s execution of the [REDACTED] and [REDACTED] Forms 872-P extended the assessment statutes for all partners. In addition, [REDACTED], as common parent for its consolidated return group, had the authority to extend the assessment statutes for [REDACTED] and [REDACTED].

The fact that [REDACTED] converted from a Delaware corporation to a Delaware LLC does not change the results. [REDACTED] still has the authority to act as TMP and to sign statute extensions under I.R.C. § 6229(b)(1)(B). Treas. Reg. § 301.6231(a)(7)-1(l)(1)(iii) only terminates a TMP designation upon the TMP's liquidation or dissolution. In this instance, [REDACTED]'s conversion to a Delaware LLC did not constitute a liquidation or dissolution within the meaning of the regulation.

The relevant Delaware statute, 8 Del. C. § 266, provides that a conversion from a Delaware corporation to a Delaware LLC has the following consequences:

1. The conversion does not affect the corporation's liability for a pre-existing obligation;
2. The converting corporation continues in existence in the form of a LLC;
3. Unless otherwise provided in the resolution of conversion, the converting corporation is not required to wind-up its affairs or distribute assets; and
4. The conversion does not result in a dissolution of the corporation.

In light of this, [REDACTED]'s conversion to a Delaware LLC did not terminate its status as [REDACTED]'s TMP for [REDACTED] and [REDACTED]. Likewise, if [REDACTED] succeeded [REDACTED] as TMP for [REDACTED], the conversion had no impact on its status as the [REDACTED] TMP.

b. TEFRA Election

I.R.C. § 6231(a)(1)(B)(i) provides an exception to the TEFRA unified audit procedures for small partnerships. For taxable years ending after August 5, 1997, the TEFRA unified audit procedures generally do not cover a partnership with 10 or fewer partners who are individuals (other than nonresident aliens), C corporations or estates of a deceased partner. However, a partnership may elect to be covered by the TEFRA procedures. I.R.C. § 6231(a)(1)(B)(ii). The election is effective for the taxable year in which the election is made and for all subsequent taxable years unless revoked with the consent of the Secretary. Treas. Reg. § 301.6231(a)(1)-1(b) sets forth the requirements for making such an election.

To make the election, the partnership must attach a statement to the partnership return for the first year the election is to be effective. The statement must be:

1. Identified as an election under I.R.C. § 6231(a)(1)(B)(ii);
2. Signed by all persons who were partners at any time during the partnership taxable year; and
3. Filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return.

Treas. Reg. § 301.6231(a)(1)-1(b)(2). The election is effective for partnership taxable year for which the return relates and for all subsequent partnership taxable years unless revoked with the consent of the Commissioner. Treas. Reg. § 301.6231(a)(1)-1(b)(3).

Here, [REDACTED] made a clear election to be covered by the TEFRA audit procedures on its [REDACTED] partnership return. The attachment to the return met all the requirements of the regulations. The attachment specifically cited I.R.C. § 6231(a)(1)(B)(ii). The attachment was signed by all the

partners and was filed with a timely partnership return. Accordingly, [REDACTED] is subject to the TEFRA audit procedures for the [REDACTED] through [REDACTED] taxable years.<sup>3</sup>

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions.

MARK A. O'LEARY (Group 2)  
Associate Area Counsel

By: \_\_\_\_\_  
C. GLENN McLOUGHLIN  
Senior Attorney

cc: AAC (LM:NR:DAL:2)

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<sup>3</sup> The partnership terminated at the end of [REDACTED] when [REDACTED] converted [REDACTED] and [REDACTED] into Delaware LLCs. [REDACTED] and [REDACTED] then became disregarded entities. Since [REDACTED] owned both disregarded entities, no partnership existed for federal tax purposes from that time on.